

## Message Text

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ACTION SNM-05

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FM AMCONSUL HONG KONG  
TO SECSTATE WASHDC 2906  
INFO AMEMBASSY BANGKOK  
AMEMBASSY MANILA  
AMEMBASSY TAIPEI  
AMEMBASSY SINGAPORE

UNCLAS HONG KONG 11712

E.O. 11652: N/A  
TAGS: SNAR HK  
SUBJECT: HONG KONG NARCOTICS LAWS

REF: (A) HONG KONG 11213; (B) STATE 170187

-- COMPILATION OF HONG KONG LAW AS IT RELATES TO NARCOTICS  
FOLLOWS IN ACCORDANCE WITH THE FORMAT OF REFTEL B. A COPY  
OF THE ORDINANCE WILL BE POUCHED SEPARATELY. IT SHOULD BE  
NOTED IN GENERAL THAT THE SEVERITY OF THE SENTENCE IMPOSED  
DEPENDS UPON THE LEVEL OF THE COURT TO WHICH THE CASE IS  
ASSIGNED WHICH IN TURN DEPENDS ON THE SERIOUSNESS OF THE  
CRIME WITH WHICH THE DEFENDANT IS CHARGED. MAGISTRATES  
COURT CARRIES A MAXIMUM SENTENCE OF THREE YEARS, DISTRICT  
COURT SEVEN YEARS AND THE HIGH COURT CAN IMPOSE A SENTENCE  
OF LIFE IMPRISONMENT.

### 1. POSSESSION:

(A) IN THEORY, POSSESSION OF ALL ILLEGAL DRUGS  
IS CONSIDERED EQUALLY SERIOUS. IN PRACTICE, CASES  
INVOLVING SOFT DRUGS, E.G., CANNABIS, ARE USUALLY  
ASSIGNED TO MAGISTRATE'S OR DISTRICT COURT; CASES  
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INVOLVING POSSESSION OF HEROIN ARE ASSIGNED TO THE HIGH  
COURT.

(B) WHILE MINUTE TRACES WHICH CANNOT BE UTILIZED  
WILL NOT BE CHARGED, THERE IS NO QUALIFYING AMOUNT.

(C) POSSESSION OR USE OF SMALL QUANTITIES CARRIES  
A MAXIMUM SENTENCE OF THREE YEARS IMPRISONMENT AND A  
FINE OF HK\$10,000 WHICH IS NOT AS SEVERE AS PENALTIES

FOR TRAFFICKING AND MANUFACTURING.

(D) PROSECUTOR HAS DISCRETION TO DETERMINE IN WHICH COURT THE CASE WILL BE TRIED. HIS DETERMINATION IS BASED UPON THE OVER-ALL SERIOUSNESS OF THE CRIME, AMOUNT AND TYPE OF DRUG INVOLVED, AND PAST INVOLVEMENT OF THE DEFENDANT.

2. TRAFFICKING:

(A) ALL ILLEGAL DRUGS ARE CONSIDERED STATUTORILY ALIKE FOR TRAFFICKING PURPOSES.

(B) PENALTIES RANGE FROM MINIMUM OF PROBATION TO LIFE IMPRISONMENT AND FINE OF HK\$5,000,000. NO MANDATORY SENTENCING REQUIREMENTS ARE ESTABLISHED. BAIL IS GENERALLY NOT ALLOWED IN NARCOTICS TRAFFICKING CASES AND THERE IS NO PROVISION FOR PAROLE. PROBATION IS SOMETIMES GIVEN FOR FIRST TIME OFFENSERS BUT IS NOT NORMALLY PERMITTED FOR VISITORS WHO CANNOT BE EXPECTED TO MEET THE SUPERVISORY TERMS OF PROBATION.

(C) ELEMENTS OF THE OFFENSE, INCLUDING INTENT, ARE FIXED IN THE STATUTES. A PRESUMPTION OF INTENT TO TRAFFICE IS CREATED BY POSSESSION OF AMOUNTS IN EXCESS OF THE FOLLOWING: MORPHINE AND HEROIN -- 1/2 GRAMS; CANNABIS -- 5 GRAMS; CANNABIS RESIN -- 2 GRAMS; OPIUM -- 3.78 GRAMS; BARBITONE -- 5 GRAMS; OTHER DRUGS IN THE ORDINANCE, INCLUDING AMPHETAMINES, CODEINE, ETC. -- 10 TABLETS OR CAPSULES.

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(D) A CONSPIRACY STATUTE EXISTS AND IS APPLIED AGAINST MEMBERS OF SYNDICATES ENGAGED IN DRUG MANUFACTURING AND TRAFFICKING.

3. CULTIVATION:

(A) CULTIVATION OF CANNABIS AND OPIUM POPPIES IS PROHIBITED, SUBJECT TO 15 YEARS IMPRISONMENT AND FINE OF HK\$100,000. ALTHOUGH NOT IN ITSELF PROHIBITED, CULTIVATION OF COCA WOULD BE TREATED AS POSSESSION OR POSSESSION FOR PURPOSES OF TRAFFICKING.

(B) N/A

(C) ELABORATION IS SUBSUMED UNDER PROHIBITION AGAINST MANUFACTURE, WHICH CARRIES A PENALTY OF LIFE IMPRISONMENT AND A FINE OF HK\$5,000,000.

4. FINANCIAL:

(A) WHILE THERE IS NO SPECIFIC OFFENSE CONCERNING FINANCIAL SUPPORT FOR DRUG DEALING, PERSONS COMMITTING SUCH ACTS WOULD BE DEALT WITH UNDER THE AIDING AND ABETTING SUBSECTIONS OF THE CONSPIRACY STATUTE.

(B) THERE ARE NO CURRENCY CONTROL LAWS RESTRICTING EXPORT OR IMPORT OF FUNDS.

5. CRIMINAL PROCEDURE:

(A) INVESTIGATIVE DETENTION PERIOD IS 48 HOURS, DURING WHICH THE CONSULATE WOULD BE NOTIFIED, AND CONSULAR ACCESS PERMITTED.

(B) LENGTH OF PRE-TRIAL DETENTION VARIES WITH COURT TO WHICH THE CASE IS ASSIGNED. THE MAXIMUM DETENTION FOR MAGISTRATE'S COURT IS ONE MONTH, HIGH COURT FOUR MONTHS.

(C) LENGTH OF TRIAL PROCESS VARIES WITH COMPLEXITY OF CASE, BUT IN GENERAL FOR A CASE OF SIMPLE POSSESSION THE LENGTH WOULD BE:

(1) TRIAL -- ONE TO TWO DAYS

(2) REVIEW -- TWO WEEKS

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(E) APPEAL -- THREE MONTHS

(D) THERE IS NO PUBLIC DEFENDER, BUT THE LEGAL AID SOCIETY WILL APPOINT A COUNSELOR BASED ON MEANS TEST. ADEQUATE LAWYERS ARE AVAILABLE AT COST OF HK\$10,000 - HK\$20,000, DEPENDING ON COMPLEXITY OF CASE AND REPUTATION OF LAWYER.

(E) NO PROVISION FOR PAROLE EXISTS, ALTHOUGH ESTABLISHMENT OF A PAROLE SYSTEM IS CONTEMPLATED. PRISONERS ARE NORMALLY GIVEN ONE-THIRD OFF SENTENCE IMPOSED FOR GOOD BEHAVIOR.

(F) ALL OFFENDERS WHO ARE IN HONG KONG ON TEMPORARY VISAS ARE EXPELLED AFTER SERVING THEIR SENTENCES. MINOR OFFENDERS ARE USUALLY SENTENCED TO TERMS OF ABOUT ONE YEAR.

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